

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3698 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
MADHUSUDAN NATWARLAL CHAUHAN

Versus

GUJARAT STATE CONSTRUCTION CORPORATION LTD

-----  
Appearance:

MR JA ADESHRA for Petitioner  
MR HJ NANAVATI for Respondent No. 1  
MR HH PATEL for Respondents No. 3, 5  
None present for other Respondents

-----  
CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/07/1999

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. On 4th March, 1998, this Court has given direction to the respondents No.3 and 4 to treat this special civil application itself as a representation of the petitioner and consider the same and pass a reasoned

order keeping in view the fact that the said respondents have absorbed other similarly situated employees in their service. It is further ordered that the decision may be placed on the record of this special civil application on the next date of hearing i.e. 6th April, 1998. Identical order has been passed in civil application No.11292/97 on 6th March, 1998.

3. On 23rd June, 1999, this Court found that the orders aforesaid of the Court have not been complied with by the respondents. The respondents No.3 and 5 were directed to remain personally present in the Court on 13th July, 1999. On 13th July, 1999, the matter has been adjourned to 26th July, 1999 and on 26th July, 1999, it has been adjourned for today.

4. The directions given by this Court on 4th March, 1998 and 6th March, 1998 have been complied with and the order has been passed on 16th July, 1999. I am not satisfied with the explanation furnished by the respondents for noncompliance of the aforesaid order. The officers in the State of Gujarat as what my experience goes are not caring to comply with the orders of this court either they don't know the provisions of Article 215 of the Constitution or of the Contempt of Court Act, 1971 or they consider themselves to be superior then the courts. This is not the first case where the court's orders are not complied with but everyday I am seeing the cases after cases where the Court's directions/orders/judgments are not being complied with. However, now the respondent has decided the matter as directed by this Court and respondent No.5 has furnished an unconditional apology, no action is now necessary to be taken in the matter for his lapse. The unconditional apology is accepted.

5. Learned counsel for the petitioner raised manifold contentions before this Court in this matter but if we go by the facts of this case, I find that the petitioner has been given the appointment purely on temporary and ad hoc basis on a consolidated salary per month initially for a period of three months though the same was extended from time to time with some break. The petitioner's services were taken in the project of the Government to be carried through a nodal agency, Gujarat State Construction Corporation Ltd.. Ultimately, there is no dispute, that this project was closed and as a result thereof, the Corporation gave notice to the petitioner dated 14th June, 1995 ending his contract of services and Rs.21791/- has also been paid as admissible to the petitioner as a consequence of his termination of

services. It is the case of the petitioner that the project in which the petitioner had been appointed has been restarted and now the Gujarat Water Supply and Sewerage Board has to undertake the same. It is the case of the petitioner that all the employees in the project aforesaid have been absorbed by the Gujarat Water Supply and Sewerage Board in connection with the work of the very project but the petitioner has been singled out. I find from the order dated 16th July, 1999 that the Board has absorbed Junior/Assistant Engineers and not the Tracers. 142 Junior/Assistant Engineers were required in the project and the respondent acted fairly to absorb them on restart of project. I have my own reservation whether the petitioner could have a right of absorption more so where his services were on purely ad hoc and temporary and on consolidated salary.

6. Though the counsel for the petitioner has raised manifold contentions, as this is a matter where the appropriate remedy with the petitioner is to raise an industrial dispute, I do not consider it to be appropriate to go on and decide those contentions otherwise it may adversely affect the industrial dispute to be raised by the petitioner.

7. There is yet another aspect of the matter which supports my this decision. The disputed questions of facts cannot be gone into by this Court and for deciding the same both the parties have to produce evidence. Under Article 226 of the Constitution, this Court is not recording the evidence. Moreover, when the petitioner has efficacious alternative remedy in such matters and taking into consideration the totality of the facts of this case and more particularly the fact that no Tracer of the category to which the petitioner belongs has been taken back in service by absorption, it is a fit case where the petitioner if he feels aggrieved of the decision given by the respondent in this matter on 16th July, 1999 to approach that forum.

8. In the result, this special civil application fails and the same is dismissed. Rule discharged. No order as to costs.

\*\*\*\*\*

zgs/-